IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRD DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

-

WRIT PETITION No. 31949 of 1998

Between:

V.S.B.Koteswara Rao

..... PETITIONER

AND

1.Executive Officer, T.T.D., Tirupati, Chittoor district

2.Engineer-in-Chief (Admn.), I&CAD Department,

Erramanzil, Hyderabad.

3.Principal Secretary, Revenue (Endowments-III)

Department, Secretariat, Hyderabad

.....**RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or direction more particularly in the nature of Writ of Certiorari calling for records relating to the Proceedings Roc.No.B6/48272/94, dated 13-11-1998 of respondent No.1 and also Proceedings No.RC.MC/A1-47474/94-1, dated 29-10-1998 of respondent No.2 as illegal, arbitrary and against the principles of natural justice and quash the same.

Counsel for Petitioner : Mr.E.Manohar, Senior Advocate for Mr.Y.Rama Rao

Counsel for Respondent No.1: Mr. A.K.Jayaprakash Rao

Standing Counsel for TTD

Counsel for Respondent Nos.2 & 3 : G.P. for Revenue

The Court made the following :

JUDGMENT:

This Writ Petition is filed seeking a Certiorari to call for the records relating to the Proceedings Roc.No.B6/48272/94, dated 13-11-1998 of the 1st respondent and also Proceedings No.RC.MC/A1-47474/94-1, dated 29-10-1998 of the 2nd respondent and quash the same.

The brief facts of the case are that the petitioner was initially appointed as Junior Engineer (Assistant Executive Engineer) in the Irrigation and Command Area Development Department of Government of Andhra Pradesh with effect from 28-10-1978. His services were regularized in the said cadre on 14-9-1979. While so, with effect from 12-11-1979, his services were loaned by Tirumala Tirupathi Devasthanams (TTD) – 1st respondent herein. Thereafter, he made a representation on 6-4-1984 seeking absorption into the services of TTD. On such application, on 13-6-1984, the Managing Committee of the TTD resolved and agreed for absorption of the petitioner in the services of TTD and his seniority in the cadre was also directed to be reckoned with effect from 13-6-1984. Then the matter was referred to the Government for approval. Vide G.O.Ms.No.809, Revenue (Endowment-III) Department, dated 15-7-1985, the Government approved the resolution of the Managing Committee of TTD and thereafter by Proceedings dated 20-8-1985 of the 1st respondent, he was absorbed into the services of TTD and was permitted to take last rank in the cadre of Assistant Executive Engineer. Subsequently, on 3-9-1992, he was promoted as Deputy Executive Engineer in the services of TTD. While the matter stood thus, the Board of TTD by its Resolution No.888, dated 7/8-12-1994 resolved to repatriate all the deputationists to the parent Department. Consequently, the impugned proceedings were issued. According to the petitioner, the above resolution and the impugned proceedings are arbitrary, illegal and without jurisdiction.

Respondent No.1 filed a detailed counter affidavit denying the allegations made by the petitioner. The sole reliance placed in passing the Resolution dated 7/8-12-1994 by the TTD was the Judgment of this Court in W.P.No.2541 of 1986, which was affirmed by the apex Court by an Order dated 17-8-1994 in Civil Appeal No.184 of 1988, wherein it was held that there shall not be permanent absorption of

deputationists in the absence of such provision in the recruitment rules of the TTD. Accordingly, the petitioner was repatriated to his parent department through the impugned Proceedings and was relieved from the services of TTD on 13-11-1998. However, he was given reposting orders as per the interim orders passed by this Court.

Sri E.Manohar, learned senior counsel appearing for the petitioner, contended that the resolution dated 7/8-12-1994 is totally misconceived and the 1st respondent was misdirected. The Judgment of the Supreme Court in Civil Appeal No.184 of 1988, dated 17-4-1994 has no relevance whatsoever for adopting the Resolution dated 7/8-12-1994. That was an individual case, which has no bearing for passing a resolution affecting all the deputationists, who were already absorbed and further promoted to higher categories. Once the absorption had taken place and the same was approved by the Government as required under the law, the 1st respondent by passing the said resolution cannot disturb the services of the petitioner. He also submitted that, in fact, a similar question arose for consideration in Writ Appeal No.1993 of 1998 and by Judgment dated 9-10-2001 a Division Bench of this Court held as follows:

> "Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organization (commonly referred to as the present department or lending authority) to another department or cadre or organization (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involved a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such activities by the borrowing employer. It also involves the consent of the employee to go on deputation or not. In the case at hand, all the three conditions were fulfilled."

Learned senior counsel appearing for the petitioner also drawn attention of the Court to Rule 9 of the Tirumala Tirupathi Devasthanams Employees Service Rules,1989, particularly, Item (5) of Clause II (Engineering Service) of Annexure II, which contemplates that an Assistant Executive Engineer could be appointed by direct recruitment or by loan of service. Therefore, it must be deemed that there was nothing wrong in the deputation of the petitioner or his absorption permanently into the services of TTD, which was approved by the Government. Hence, merely basing on a decision of the Supreme Court in respect of a particular individual, the Board

could not have passed the resolution and issued the consequential proceedings repatriating the petitioner to his parent department. Even assuming that the resolution passed by the Board dated 7/8-12-1994 was followed, it has no application to the persons, who have already been absorbed into the services of TTD. The posting order purported to have been given by the Engineer-in-Chief – 2nd respondent herein – has no relevance.

On the other hand, the learned standing counsel for the 1st respondent contended that the petitioner is only a deputationist and he has no vested right to claim permanent absorption in the services of TTD and he can be repatriated at any time by the TTD to his parent department. Therefore, in view of the observations made in the Judgment in W.P.No.2541 of 1986, dated 12-9-1986, which was affirmed by the Division Bench of this Court in W.A.No.1166 of 1986 and by the Supreme Court by Judgment dated 17-8-1994 in Civil Appeal No.184 of 1988, the resolution dated 7/8-12-1994 was passed. Whether the petitioner was absorbed permanently or the same was approved by the Government or he was subsequently promoted to higher cadre have no effect whatsoever. Respondent No.1 has every right to send the deputationists back to their parent department at any time.

As seen from the Judgment of a Division Bench of this Court in Writ Appeal No.1993 of 1998, dated 9-10-2001 the issue in this writ petition is no more *res integra.* After noticing various provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act,1987 (for short 'the Act') and Rule 9 of the Rules made under the TTD Employees Service Rules, which provides for appointment and method of recruitment in terms of Annexure-II appended thereto and also the decision of the apex Court in **UMAPARTHY v. STATE OF BIHAR** held that once a person was absorbed legally in the services of TTD, the question of his repatriation to his parent department did not and could not arise. It was further held that when once the parent department granted 'No Objection Certificate', the relationship of master and servant by and between the parent department and the employee ceased to exist and a new relationship by and between the borrowing department and the employee comes into being. It was also held that in such a situation, the appellant therein could continue to be the employee of the TTD only. In the said case, the Division Bench also considered the Judgment of this Court in Writ Appeal No.1166 of 1986, which was confirmed in Civil Appeal No.184 of 1988 by the Supreme Court, elaborately and came to the conclusion that the appellant therein

(deputationist, who since absorbed) was to be declared as an employee of the TTD and he cannot be repatriated to his parent department. There is no necessity of repeating all the facts again.

Following the said Judgment, I am of the opinion that the services of the petitioner with the 1st respondent- TTD cannot be disturbed, since by a valid resolution passed by the Managing Committee on 13-6-1984 he was absorbed and the same was approved by the Government vide G.O.Ms.No.809, dated 15-7-1985 and orders were issued accordingly on 20-8-1985 asking him to take last rank in the cadre of Assistant Executive Engineer. Further, he was also promoted as Deputy Executive Engineer with effect from 3-9-1992. Hence, even assuming that there was a resolution passed by the Board on 7/8-12-1994, it has no bearing to the case of the petitioner, as by the time, the resolution was passed, the petitioner was already absorbed permanently and was promoted to a higher rank. Therefore, the contention of the 1st respondent that the petitioner has no vested right whatsoever and he cannot seek permanent absorption into the services of TTD cannot be accepted.

For all the above reasons, the writ petition is allowed and the impugned Proceedings are quashed. No order as to costs.

3rd August, 2004

Prk

The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this third day of August Two thousand and four.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1.Executive Officer, T.T.D., Tirupati, Chittoor district

2.Engineer-in-Chief (Admn.), I&CAD Department,

Erramanzil, Hyderabad.

3.Principal Secretary, Revenue (Endowments-III)

Department, Secretariat, Hyderabad.

4. 2 CCs to the GP for Revenue, High Court Buildings, Hyderabad (O.U.T.)

5. 2 CD copies.